

**ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO 2003 ASSEMBLY BILL 279**

**AN ACT** *to renumber* 767.11 (6), 767.24 (5) (a), 767.24 (5) (b), 767.24 (5) (c), 767.24 (5) (cm), 767.24 (5) (d), 767.24 (5) (dm), 767.24 (5) (em), 767.24 (5) (f), 767.24 (5) (fm), 767.24 (5) (g), 767.24 (5) (h), 767.24 (5) (i), 767.24 (5) (j), 767.24 (5) (jm) and 767.24 (5) (k); **to renumber and amend** 767.11 (5) (a), 767.23 (1n), 767.24 (5) (intro.) and 767.24 (5) (e); **to amend** 757.48 (1) (a), 767.045 (4), 767.11 (4), 767.11 (8) (a), 767.11 (8) (c), 767.11 (9) (intro.), 767.11 (10) (intro.), 767.115 (1) (a), 767.24 (2) (a), 767.24 (2) (am), 767.24 (2) (b) (intro.), 767.24 (2) (c), 767.24 (4) (a) 2. and 767.325 (5m); and **to create** 767.11 (5) (a) 2., 767.11 (6) (b), 767.11 (14) (a) 2m., 767.23 (1n) (b) 2., 767.24 (2) (d), 767.24 (5) (bm), 767.24 (6) (f) and 767.24 (6) (g) of the statutes; **relating to:** creating a rebuttable presumption against awarding a parent joint or sole legal custody if the court finds that the parent has engaged in a pattern or serious incident of abuse, requiring a guardian ad litem and a mediator to have training related to domestic violence,

requiring a guardian ad litem to investigate whether a party in an action affecting the family engaged in domestic violence, and requiring screening for domestic abuse at the initial mediation session.

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***Analysis by the Legislative Reference Bureau***

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1       **SECTION 1.** 757.48 (1) (a) of the statutes is amended to read:

2       757.48 **(1)** (a) Except as provided in s. 879.23 (4), in all matters in which a  
3 guardian ad litem is appointed by the court, the guardian ad litem shall be an  
4 attorney admitted to practice in this state. In order to be appointed as a guardian  
5 ad litem under s. 767.045, an attorney shall have completed 3 hours of approved  
6 continuing legal education relating that relates to the functions and duties of a  
7 guardian ad litem under ch. 767 and that includes training on the dynamics of  
8 domestic violence and the effects of domestic violence on victims of domestic violence  
9 and on children.

10       **SECTION 2.** 767.045 (4) of the statutes is amended to read:

11       767.045 **(4)** RESPONSIBILITIES. The guardian ad litem shall be an advocate for  
12 the best interests of a minor child as to paternity, legal custody, physical placement,  
13 and support. The guardian ad litem shall function independently, in the same  
14 manner as an attorney for a party to the action, and shall consider, but shall not be  
15 bound by, the wishes of the minor child or the positions of others as to the best  
16 interests of the minor child. The guardian ad litem shall consider the factors under  
17 s. 767.24 (5) (am), subject to s. 767.24 (5) (bm), and custody studies under s. 767.11  
18 (14). The guardian ad litem shall investigate whether there is evidence that either

1 parent has engaged in interspousal battery, as described in s. 940.19 or 940.20 (1m),  
2 or domestic abuse, as defined in s. 813.12 (1) (am), and shall report to the court on  
3 the results of the investigation. The guardian ad litem shall review and comment  
4 to the court on any mediation agreement and stipulation made under s. 767.11 (12)  
5 and on any parenting plan filed under s. 767.24 (1m). Unless the child otherwise  
6 requests, the guardian ad litem shall communicate to the court the wishes of the  
7 child as to the child's legal custody or physical placement under s. 767.24 (5) ~~(b)~~ (am)  
8 2. The guardian ad litem has none of the rights or duties of a general guardian.

9 **SECTION 3.** 767.11 (4) of the statutes is amended to read:

10 767.11 **(4)** MEDIATOR QUALIFICATIONS. Every mediator assigned under sub. (6)  
11 (a) shall have not less than 25 hours of mediation training or not less than 3 years  
12 of professional experience in dispute resolution. Every mediator assigned under sub.  
13 (6) (a) shall have training on the dynamics of domestic violence and the effects of  
14 domestic violence on victims of domestic violence and on children.

15 **SECTION 4.** 767.11 (5) (a) of the statutes is renumbered 767.11 (5) (a) (intro.) and  
16 amended to read:

17 767.11 **(5)** (a) (intro.) ~~In~~ Except as provided in sub. (8) (b), in any action affecting  
18 the family, including a revision of judgment or order under s. 767.32 or 767.325, in  
19 which it appears that legal custody or physical placement is contested, the court or  
20 circuit court commissioner shall refer the parties to the director of family court  
21 counseling services for possible mediation of those contested issues. The court or  
22 circuit court commissioner shall inform the parties ~~that~~ of all of the following:

23 1. That the confidentiality of communications in mediation is waived if the  
24 parties stipulate under sub. (14) (c) that the person who provided mediation to the

1 parties may also conduct the legal custody or physical placement study under sub.  
2 (14).

3 **SECTION 5.** 767.11 (5) (a) 2. of the statutes is created to read:

4 767.11 **(5)** (a) 2. That the court may waive the requirement to attend at least  
5 one mediation session if the court determines that attending the session will cause  
6 undue hardship or would endanger the health or safety of one of the parties and the  
7 bases on which the court may make its determination.

8 **SECTION 6.** 767.11 (6) of the statutes is renumbered 767.11 (6) (a).

9 **SECTION 7.** 767.11 (6) (b) of the statutes is created to read:

10 767.11 **(6)** (b) Any intake form that the family court counseling services  
11 requires the parties to complete before commencement of mediation shall ask each  
12 party whether either of the parties has engaged in interspousal battery, as described  
13 in s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am).

14 **SECTION 8.** 767.11 (8) (a) of the statutes is amended to read:

15 767.11 **(8)** (a) Except as provided in par. (b), in any action affecting the family,  
16 including an action for revision of judgment or order under s. 767.32 or 767.325, in  
17 which it appears that legal custody or physical placement is contested, the parties  
18 shall attend at least one session with a mediator assigned under sub. (6) (a) or  
19 contracted with under sub. (7) and, if the parties and the mediator determine that  
20 continued mediation is appropriate, no court may hold a trial of or a final hearing on  
21 legal custody or physical placement until after mediation is completed or terminated.

22 **SECTION 9.** 767.11 (8) (c) of the statutes is amended to read:

23 767.11 **(8)** (c) The initial session under par. (a) shall be a screening and  
24 evaluation mediation session, including screening for domestic abuse, to determine

1 whether mediation is appropriate and whether both parties wish to continue in  
2 mediation.

3 **SECTION 10.** 767.11 (9) (intro.) of the statutes is amended to read:

4 767.11 **(9)** PROHIBITED ISSUES IN MEDIATION. (intro.) If mediation is provided by  
5 a mediator assigned under sub. (6) (a), no issue relating to property division,  
6 maintenance, or child support may be considered during the mediation unless all of  
7 the following apply:

8 **SECTION 11.** 767.11 (10) (intro.) of the statutes is amended to read:

9 767.11 **(10)** POWERS AND DUTIES OF MEDIATOR. (intro.) A mediator assigned  
10 under sub. (6) (a) shall be guided by the best interest of the child and may do any of  
11 the following, at his or her discretion:

12 **SECTION 12.** 767.11 (14) (a) 2m. of the statutes is created to read:

13 767.11 **(14)** (a) 2m. Whether either party has engaged in interspousal battery,  
14 as described in s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12  
15 (1) (am).

16 **SECTION 13.** 767.115 (1) (a) of the statutes is amended to read:

17 767.115 **(1)** (a) At any time during the pendency of an action affecting the family  
18 in which a minor child is involved and in which the court or circuit court  
19 commissioner determines that it is appropriate and in the best interest of the child,  
20 the court or circuit court commissioner, on its own motion, may order the parties to  
21 attend a program specified by the court or circuit court commissioner concerning the  
22 effects on a child of a dissolution of the marriage. If the court or circuit court  
23 commissioner orders the parties to attend a program under this paragraph and there  
24 is evidence that one or both of the parties have engaged in interspousal battery, as  
25 described in s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1)

1 (am), the court or circuit court commissioner may not require the parties to attend  
2 the program together or at the same time.

3 **SECTION 14.** 767.23 (1n) of the statutes is renumbered 767.23 (1n) (a) and  
4 amended to read:

5 767.23 **(1n)** (a) Before making any temporary order under sub. (1), the court  
6 or circuit court commissioner shall consider those factors that the court is required  
7 by this chapter to consider before entering a final judgment on the same subject  
8 matter. In making a determination under sub. (1) (a) or (am), the court or circuit  
9 court commissioner shall consider the factors under s. 767.24 (5) (am), subject to s.  
10 767.24 (5) (bm).

11 (b) 1. If the court or circuit court commissioner makes a temporary child  
12 support order that deviates from the amount of support that would be required by  
13 using the percentage standard established by the department under s. 49.22 (9), the  
14 court or circuit court commissioner shall comply with the requirements of s. 767.25  
15 (1n).

16 (c) A temporary order under sub. (1) may be based upon the written stipulation  
17 of the parties, subject to the approval of the court or the circuit court commissioner.  
18 Temporary orders made by a circuit court commissioner may be reviewed by the  
19 court.

20 **SECTION 15.** 767.23 (1n) (b) 2. of the statutes is created to read:

21 767.23 **(1n)** (b) 2. If the court or circuit court commissioner finds by a  
22 preponderance of the evidence that a party has engaged in a pattern or serious  
23 incident of interspousal battery, as described under s. 940.19 or 940.20 (1m), or  
24 domestic abuse, as defined in s. 813.12 (1) (am), and makes a temporary order  
25 awarding joint or sole legal custody or periods of physical placement to the party, the

1 court or circuit court commissioner shall comply with the requirements of s. 767.24  
2 (6) (f) and, if appropriate, (g).

3 **SECTION 16.** 767.24 (2) (a) of the statutes is amended to read:

4 767.24 **(2)** (a) Subject to pars. (am), (b) ~~and~~, (c), and (d), based on the best  
5 interest of the child and after considering the factors under sub. (5) (am), subject to  
6 sub. (5) (bm), the court may give joint legal custody or sole legal custody of a minor  
7 child.

8 **SECTION 17.** 767.24 (2) (am) of the statutes is amended to read:

9 767.24 **(2)** (am) ~~The Except as provided in par. (d), the~~ court shall presume that  
10 joint legal custody is in the best interest of the child.

11 **SECTION 18.** 767.24 (2) (b) (intro.) of the statutes is amended to read:

12 767.24 **(2)** (b) (intro.) ~~The Except as provided in par. (d), the~~ court may give sole  
13 legal custody only if it finds that doing so is in the child's best interest and that either  
14 of the following applies:

15 **SECTION 19.** 767.24 (2) (c) of the statutes is amended to read:

16 767.24 **(2)** (c) ~~The Except as provided in par. (d), the~~ court may not give sole  
17 legal custody to a parent who refuses to cooperate with the other parent if the court  
18 finds that the refusal to cooperate is unreasonable.

19 **SECTION 20.** 767.24 (2) (d) of the statutes is created to read:

20 767.24 **(2)** (d) 1. Except as provided in subd. 4., if the court finds by a  
21 preponderance of the evidence that a party has engaged in a pattern or serious  
22 incident of interspousal battery, as described under s. 940.19 or 940.20 (1m), or  
23 domestic abuse, as defined in s. 813.12 (1) (am), pars. (am), (b), and (c) do not apply  
24 and there is a rebuttable presumption that it is detrimental to the child and contrary  
25 to the best interest of the child to award joint or sole legal custody to that party. The

1 presumption under this subdivision may be rebutted only by a preponderance of  
2 evidence of all of the following:

3 a. The party who committed the battery or abuse has successfully completed  
4 treatment for batterers provided through a certified treatment program or by a  
5 certified treatment provider and is not abusing alcohol or any other drug.

6 b. It is in the best interest of the child for the party who committed the battery  
7 or abuse to be awarded joint or sole legal custody based on a consideration of the  
8 factors under sub. (5) (am).

9 2. If the court finds under subd. 1. that both parties engaged in a pattern or  
10 serious incident of interspousal battery, as described under s. 940.19 or 940.20 (1m),  
11 or domestic abuse, as defined in s. 813.12 (1) (am), the party who engaged in the  
12 battery or abuse for purposes of the presumption under subd. 1. is the party that the  
13 court determines was the primary physical aggressor. Except as provided in subd.  
14 3., in determining which party was the primary physical aggressor, the court shall  
15 consider all of the following:

16 a. Prior acts of domestic violence between the parties.

17 b. The relative severity of the injuries, if any, inflicted upon a party by the other  
18 party in any of the prior acts of domestic violence under subd. 2. a.

19 c. The likelihood of future injury to either of the parties resulting from acts of  
20 domestic violence.

21 d. Whether either of the parties acted in self-defense in any of the prior acts  
22 of domestic violence under subd. 2. a.

23 e. Whether there is or has been a pattern of coercive and abusive behavior  
24 between the parties.



1 f. Any other factor that the court considers relevant to the determination under  
2 this subdivision.

3 3. If the court must determine under subd. 2. which party was the primary  
4 physical aggressor and one, but not both, of the parties has been convicted of a crime  
5 that was an act of domestic abuse, as defined in s. 813.12 (1) (am), with respect to the  
6 other party, the court shall find the party who was convicted of the crime to be the  
7 primary physical aggressor.

8 4. The presumption under subd. 1. does not apply if the court finds that both  
9 parties engaged in a pattern or serious incident of interspousal battery or domestic  
10 abuse but the court determines that neither party was the primary physical  
11 aggressor.

12 **SECTION 21.** 767.24 (4) (a) 2. of the statutes is amended to read:

13 767.24 **(4)** (a) 2. In determining the allocation of periods of physical placement,  
14 the court shall consider each case on the basis of the factors in sub. (5) (am), subject  
15 to sub. (5) (bm). The court shall set a placement schedule that allows the child to have  
16 regularly occurring, meaningful periods of physical placement with each parent and  
17 that maximizes the amount of time the child may spend with each parent, taking into  
18 account geographic separation and accommodations for different households.

19 **SECTION 22.** 767.24 (5) (intro.) of the statutes is renumbered 767.24 (5) (am)  
20 (intro.) and amended to read:

21 767.24 **(5)** (am) (intro.) In Subject to par. (bm), in determining legal custody and  
22 periods of physical placement, the court shall consider all facts relevant to the best  
23 interest of the child. The court may not prefer one parent or potential custodian over  
24 the other on the basis of the sex or race of the parent or potential custodian. The

1 Subject to par. (bm), the court shall consider the following factors in making its  
2 determination:

3 **SECTION 23.** 767.24 (5) (a) of the statutes is renumbered 767.24 (5) (am) 1.

4 **SECTION 24.** 767.24 (5) (b) of the statutes is renumbered 767.24 (5) (am) 2.

5 **SECTION 25.** 767.24 (5) (bm) of the statutes is created to read:

6 767.24 (5) (bm) If the court finds under sub. (2) (d) that a parent has engaged  
7 in a pattern or serious incident of interspousal battery, as described under s. 940.19  
8 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am), the safety and  
9 well-being of the child and the safety of the parent who was the victim of the battery  
10 or abuse shall be the paramount concerns in determining legal custody and periods  
11 of physical placement.

12 **SECTION 26.** 767.24 (5) (c) of the statutes is renumbered 767.24 (5) (am) 3.

13 **SECTION 27.** 767.24 (5) (cm) of the statutes is renumbered 767.24 (5) (am) 4.

14 **SECTION 28.** 767.24 (5) (d) of the statutes is renumbered 767.24 (5) (am) 5.

15 **SECTION 29.** 767.24 (5) (dm) of the statutes is renumbered 767.24 (5) (am) 6.

16 **SECTION 30.** 767.24 (5) (e) of the statutes is renumbered 767.24 (5) (am) 7. and  
17 amended to read:

18 767.24 (5) (am) 7. The Whether the mental and or physical health of the parties,  
19 the minor children and other persons a party, minor child, or other person living in  
20 a proposed custodial household negatively affects the child's intellectual, physical,  
21 or emotional well-being.

22 **SECTION 31.** 767.24 (5) (em) of the statutes is renumbered 767.24 (5) (am) 8.

23 **SECTION 32.** 767.24 (5) (f) of the statutes is renumbered 767.24 (5) (am) 9.

24 **SECTION 33.** 767.24 (5) (fm) of the statutes is renumbered 767.24 (5) (am) 10.

25 **SECTION 34.** 767.24 (5) (g) of the statutes is renumbered 767.24 (5) (am) 11.

1           **SECTION 35.** 767.24 (5) (h) of the statutes is renumbered 767.24 (5) (am) 12.

2           **SECTION 36.** 767.24 (5) (i) of the statutes is renumbered 767.24 (5) (am) 13.

3           **SECTION 37.** 767.24 (5) (j) of the statutes is renumbered 767.24 (5) (am) 14.

4           **SECTION 38.** 767.24 (5) (jm) of the statutes is renumbered 767.24 (5) (am) 15.

5           **SECTION 39.** 767.24 (5) (k) of the statutes is renumbered 767.24 (5) (am) 16.

6           **SECTION 40.** 767.24 (6) (f) of the statutes is created to read:

7           767.24 **(6)** (f) If the court finds under sub. (2) (d) that a party has engaged in  
8 a pattern or serious incident of interspousal battery, as described under s. 940.19 or  
9 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am), the court shall state  
10 in writing whether the presumption against awarding joint or sole legal custody to  
11 that party is rebutted and, if so, what evidence rebutted the presumption, and why  
12 its findings relating to legal custody and physical placement are in the best interest  
13 of the child.

14           **SECTION 41.** 767.24 (6) (g) of the statutes is created to read:

15           767.24 **(6)** (g) If the court finds under sub. (2) (d) that a party has engaged in  
16 a pattern or serious incident of interspousal battery, as described under s. 940.19 or  
17 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am), and the court awards  
18 periods of physical placement to both parties, the court shall provide for the safety  
19 and well-being of the child and for the safety of the party who was the victim of the  
20 battery or abuse. For that purpose the court, giving consideration to the availability  
21 of services or programs and to the ability of the party who committed the battery or  
22 abuse to pay for those services or programs, shall impose one or more of the following,  
23 as appropriate:

24           1. Requiring the exchange of the child to occur in a protected setting or in the  
25 presence of an appropriate 3rd party who agrees by affidavit or other supporting

1 evidence to assume the responsibility assigned by the court and to be accountable to  
2 the court for his or her actions with respect to the responsibility.

3 2. Requiring the child's periods of physical placement with the party who  
4 committed the battery or abuse to be supervised by an appropriate 3rd party who  
5 agrees by affidavit or other supporting evidence to assume the responsibility  
6 assigned by the court and to be accountable to the court for his or her actions with  
7 respect to the responsibility.

8 3. Requiring the party who committed the battery or abuse to pay the costs of  
9 supervised physical placement.

10 4. Requiring the party who committed the battery or abuse to attend and  
11 complete, to the satisfaction of the court, treatment for batterers provided through  
12 a certified treatment program or by a certified treatment provider as a condition of  
13 exercising his or her periods of physical placement.

14 5. If the party who committed the battery or abuse has a significant problem  
15 with alcohol or drug abuse, prohibiting that party from being under the influence of  
16 alcohol or any controlled substance when the parties exchange the child for periods  
17 of physical placement and from possessing or consuming alcohol or any controlled  
18 substance during his or her periods of physical placement.

19 6. Prohibiting the party who committed the battery or abuse from having  
20 overnight physical placement with the child.

21 7. Requiring the party who committed the battery or abuse to post a bond for  
22 the return and safety of the child.

23 8. Imposing any condition not specified in subds. 1. to 7. that the court  
24 determines is necessary for the safety and well-being of the child or the safety of the  
25 party who was the victim of the battery or abuse.

**SECTION 42.** 767.325 (5m) of the statutes is amended to read:

**767.325 (5m) FACTORS TO CONSIDER.** In all actions to modify legal custody or physical placement orders, the court shall consider the factors under s. 767.24 (5) (am), subject to s. 767.24 (5) (bm), and shall make its determination in a manner consistent with s. 767.24.

### SECTION 43. Initial applicability.

(1) This act first applies to actions or proceedings that are commenced on the effective date of this subsection, including actions or proceedings to modify a judgment or order granted before the effective date of this subsection.

**(END)**